

SENATE BILL No. 255

DIGEST OF INTRODUCED BILL

Citations Affected: IC 20-12.5.

Synopsis: Design-build by state universities. Authorizes a state educational institution to enter into a design-build contract for the performance of a public project by the state educational institution. Establishes the procedures for solicitation and award of a design-build contract.

Effective: July 1, 2004.

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January 8, 2004, read first time and referred to Committee on Governmental Affairs and Interstate Cooperation.

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Introduced

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

SENATE BILL No. 255

A BILL FOR AN ACT to amend the Indiana Code concerning education.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 20-12.5 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
3 2004]:
4 **ARTICLE 12.5. DESIGN-BUILD PUBLIC WORKS**
5 **PROJECTS BY STATE EDUCATIONAL INSTITUTIONS**
6 **Chapter 1. General Provisions**
7 **Sec. 1. A design-build contract awarded as provided in this**
8 **article is valid and enforceable.**
9 **Chapter 2. Definitions**
10 **Sec. 1. The definitions in this chapter apply throughout this**
11 **article.**
12 **Sec. 2. "Construction services" means services provided under**
13 **a design-build contract that are not design services.**
14 **Sec. 3. "Design-build contract" means a contract between a**
15 **state educational institution and a design-builder to furnish:**
16 **(1) architectural, engineering, and related design services as**
17 **required for a public project; and**

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(2) labor, materials, and other construction services for the same public project.

Sec. 4. "Design-builder" means a person that furnishes the necessary design and construction services under a design-build contract, whether by itself or through contractual arrangements.

Sec. 5. "Design criteria developer" means an architect or a professional engineer registered under Indiana law that is responsible for preparing the design criteria package for a specific public project.

Sec. 6. "Design criteria package" means a set of documents that provides sufficient information to permit an offeror to prepare a response to a state educational institution's request for proposals.

Sec. 7. "Design services" means services that are:

- (1) within the scope of practice specified by IC 25-4 for architecture or IC 25-31 for professional engineering; or
- (2) performed by a registered architect or professional engineer in connection with the architect's or engineer's professional employment or practice.

Sec. 8. "Offeror" means a person who submits a proposal in response to a request for proposals or a request for qualifications under IC 20-12.5-5.

Sec. 9. "Party related" refers to a person that is related to another person as any of the following:

- (1) A parent.
- (2) A descendant.
- (3) A spouse.
- (4) A spouse of a descendant.
- (5) A sibling.
- (6) A spouse of a sibling.
- (7) An employer.
- (8) An employee.
- (9) A partner.
- (10) A joint venturer.
- (11) A partnership of which the other person is a partner.
- (12) A corporation of which the other person is an officer, a director, or a shareholder.
- (13) A limited liability company that the other person owns or manages directly or indirectly.

Sec. 10. "Person" means an individual, a firm, a partnership, a limited liability company, a joint venture, an association, a corporation, or another legal entity.

Sec. 11. "Proposal" means an offer by an offeror to enter into

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a design-build contract for a public project in response to a request for proposals.

Sec. 12. (a) "Public project" means the process of designing, constructing, reconstructing, altering, or renovating a public building, an airport facility, or another structure or improvement undertaken by a state educational institution.

(b) The term includes any of the following:

(1) A process described in subsection (a) related to a building or structure leased by a state educational institution under a lease containing an option to purchase.

(2) An improvement to real property owned by a state educational institution.

Sec. 13. "State educational institution" has the meaning set forth in IC 20-12-0.5-1.

Chapter 3. Design-Builder Qualifications

Sec. 1. At the time design services or construction services are to be provided under a design-build contract, a design-builder must:

(1) be a person;

(2) employ persons; or

(3) have as a partner, member, joint venturer, or subcontractor a person;

licensed, registered, certified, or otherwise qualified to provide the design services and construction services required to complete the public project and do business in Indiana.

Sec. 2. A design-builder may contract with the state educational institution to provide design services and construction services that the design-builder is not itself licensed, registered, or otherwise qualified to perform if the design-builder provides the services through subcontracts with licensed, registered, or otherwise qualified persons in accordance with this article.

Sec. 3. This article does not limit or eliminate the responsibility or liability owed by a person providing design services to the state educational institution or other third parties imposed by Indiana law.

Chapter 4. Technical Review Committee

Sec. 1. (a) Before entering into a design-build contract, a state educational institution must appoint a technical review committee of at least three (3) individuals.

(b) The members of the technical review committee must include the following:

(1) A representative of the state educational institution.

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(2) Any of the following:

(A) An architect registered under IC 25-4.

(B) A landscape architect registered under IC 25-4.

(C) A professional engineer registered under IC 25-31.

(c) A member of the technical review committee who is an architect, a landscape architect, or a professional engineer may be:

(1) an employee of the state educational institution; or

(2) an outside consultant retained by the state educational institutional for the specific purpose of evaluating proposals submitted under this article.

(d) The design criteria developer may serve either as a full member of the committee or as a nonvoting adviser.

Sec. 2. (a) A:

(1) member of the technical review committee; or

(2) party related to a member of the technical review committee;

may not submit a proposal for or furnish any design services or construction services under the design-build contract.

(b) The design-builder may not delegate or subcontract professional services or construction services under the design-build contract to:

(1) a member of the technical review committee; or

(2) a party related to a member of the technical review committee.

Sec. 3 The technical review committee shall do the following:

(1) Qualify potential design-builders as provided in IC 20-12.5-5.

(2) Rate and score qualitative proposals as provided in IC 20-12.5-7.

Sec. 4. Meetings of the technical review committee are subject to IC 5-14-1.5.

Chapter 5. Request for Qualifications

Sec. 1. When design-build services are considered for a public project, a state educational institution shall publish a notice of a request for qualifications as provided in IC 5-3-1.

Sec. 2. Each notice published under section 1 of this chapter must provide the following information:

(1) The location of the public project.

(2) A general description of the public project.

(3) A description of areas of qualification required for performance of the work, such as experience, management resources, and financial capability.

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(4) The basis on which the most qualified offerors will be determined.

(5) Any other requirements for the submission of statements of qualifications.

Sec. 3. An offeror submitting proposals for the public project must submit a verified statement of qualifications setting forth the qualifications of the offeror and must provide the other information required by the request for qualifications.

Sec. 4. The technical review committee shall determine the relative ability of each offeror to perform the services required for each public project. Determination of ability may include consideration of any of the following:

- (1) The design-builder's experience.
- (2) The design-builder's financial and bonding capacity.
- (3) The design-builder's managerial resources.
- (4) The design-builder's safety record.
- (5) The design-builder's past performance and capacity to perform.
- (6) The design-builder's ability to complete the work in a timely and satisfactory manner.
- (7) Other selection criteria set forth in the request for qualifications.

Sec. 5. The technical review committee may not consider cost related or price related evaluation factors.

Sec. 6. (a) The technical review committee shall select at least three (3) and not more than five (5) offerors considered to be the most highly qualified to perform the required services. However, the technical review committee may submit fewer than three (3) offerors if all members of the technical review committee sign a written statement that fewer than three (3) proposals responsive to the request for qualifications were received from qualified offerors.

(b) The technical review committee shall report the selection of offerors to the state educational institution.

Chapter 6. Request for Proposals

Sec. 1. The state educational institution shall issue a request for proposals to the offerors selected under IC 20-12.5-5-6. Each request for proposals must contain a design criteria package.

Sec. 2. (a) The design criteria developer shall prepare the design criteria package.

(b) The design criteria developer or a party related to the design criteria developer may not submit a proposal or furnish design or construction services under the design-build contract or a

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subcontract.

(c) The design-builder may not delegate or subcontract design services or construction services under the design-build contract to the design criteria developer or a party related to the design criteria developer.

Sec. 3. (a) The state educational institution, in consultation with the design criteria developer, shall determine the scope and level of detail required for the design criteria package.

(b) The design criteria package must specify the design criteria necessary to describe the public project, which may include, as appropriate, the following:

- (1) A legal description and survey of the site.
- (2) Interior space requirements.
- (3) Special material requirements.
- (4) Material quality standards.
- (5) Conceptual design criteria for the public project.
- (6) Special equipment requirements.
- (7) Cost or budget estimates.
- (8) Quality assurance and quality control requirements.
- (9) Site development requirements.
- (10) Compliance with applicable codes and ordinances.
- (11) Permits and connections to utilities.
- (12) Requirements for storm water and roads.
- (13) Parking requirements.
- (14) Soil borings and geotechnical information or performance specifications.
- (15) Life cycle costing and energy consumption requirements.
- (16) Any other applicable requirements.

Sec. 4. In addition to the design criteria package, a request for proposals must include the following:

- (1) Instructions.
- (2) Proposal forms.
- (3) Proposed contracts.
- (4) General and special conditions.
- (5) The basis for evaluation of proposals, including a description of the selection criteria with the weight assigned to each criterion.
- (6) Any other instructions, documents, or information that the state educational institution considers relevant to the public project.

Sec. 5. The request for proposals must include the requirement that a proposal be submitted in two (2) packages, a qualitative

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proposal and a price proposal.

Chapter 7. Selection and Award

Sec. 1. A proposal in response to a request for proposals described in IC 20-12.5-6 must satisfy the following:

(1) The qualitative proposal and the price proposal must be submitted simultaneously in separately sealed and identified packages.

(2) A proposal must identify each person with whom the offeror proposes to enter into subcontracts for primary design services and primary construction services under the design-build contract. For purposes of this subdivision, a person provides primary design services if that person, either by itself or through subcontracts, furnishes more than fifty percent (50%) of the total design services on a public project. For purposes of this subdivision, a person provides primary construction services if that person, either by itself or through subcontracts, furnishes more than fifty percent (50%) of the total construction services on a public project.

(3) The price proposal must:

(A) contain one (1) lump sum cost of all design, construction engineering, inspection, and construction costs of the proposed public project; and

(B) establish a maximum cost of the design-build contract that will not be exceeded if the proposal is accepted without change.

(4) The qualitative proposal must include all documents, information, and data requested in the request for proposals.

Sec. 2. (a) The state educational institution shall submit the qualitative proposals to the technical review committee.

(b) The state educational institution may require clarifications from an offeror to ensure conformance of proposals with the design criteria.

(c) The technical review committee may not consider a proposal until the design criteria developer provides its professional opinion that the proposal conforms with the design criteria.

Sec. 3. (a) The technical review committee shall review the qualitative proposals and establish a score for each qualitative proposal based on the factors, weighting, and process identified in the request for proposals.

(b) The technical review committee shall give a written composite score for each qualitative proposal.

Sec. 4. The state educational institution shall notify all offerors

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of the date, time, and location of the public opening of the sealed price proposals at least seven (7) days before the opening date.

Sec. 5. The state educational institution shall publicly open the sealed price proposals and divide each offeror's price by the score that the technical review committee has given to the qualitative proposal to obtain an adjusted price.

Sec. 6. The state educational institution shall accept the proposal that provides the state educational institution with the lowest adjusted price. The state educational institution is not required to accept the lowest price proposal.

Sec. 7. (a) The state educational institution may negotiate any contract term with the offeror selected under section 6 of this chapter, except for terms identified in the request for proposals as nonnegotiable.

(b) If the state educational institution is unable to negotiate a contract with its first selection, the state educational institution may:

- (1) suspend or end negotiations with that offeror; and
- (2) negotiate with the next lowest adjusted price offeror.

A state educational institution shall continue in accordance with this procedure until a contract agreement is reached or the selection process is terminated.

Sec. 8. (a) Unless and until a proposal is accepted, the drawings, specifications, and other information in the proposal are the property of the offeror.

(b) The state educational institution:

- (1) shall make reasonable efforts to maintain the confidentiality of all proposals and all information contained in the proposals; and
- (2) may not disclose the proposals or the information contained in the proposals to offeror's competitors or to the public.

(c) After a proposal is accepted, ownership of the drawings, specifications, and information in the drawings and specifications shall be determined under Indiana law and the terms of the design-build contract.

Chapter 8. Miscellaneous Provisions

Sec. 1. A design-build contract may be conditional upon subsequent refinements in scope and price and may permit the state educational institution to make changes in the scope of the public project without invalidating the design-build contract.

Sec. 2. (a) A person identified under IC 20-12.5-7-1 as a person

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1 with whom the design-builder proposes to enter into a subcontract
2 for primary design services or primary construction services under
3 the design-build contract may not be replaced without the approval
4 of the state educational institution.

5 (b) If a design-builder violates subsection (a), the state
6 educational institution may cancel the award of a design-build
7 contract.

8 Sec. 3. After award, the maximum cost established in the
9 successful proposal may be adjusted by negotiated agreement
10 between the state educational institution and the design-builder to
11 reflect modifications in the proposed public project requested by
12 the state educational institution.

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